

Memorandum of Decision: 04-20182010R
Sales Tax
For Tax Period August 2017 to December 2017

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this document.

HOLDING

Restaurant provided documentation demonstrating that a one-for-one meter number change occurred for two meters previously granted sales tax exemptions.

ISSUE

I. Sales Tax—Utility Exemption.

Authority: IC § 6-2.5-1-27; IC § 6-2.5-2-1; IC § 6-2.5-5-5.1; IC § 6-2.5-8-8.

Taxpayer protests the denial of a refund of sales tax paid on electric utility purchases.

STATEMENT OF FACTS

Taxpayer is a restaurant and bar operating in Indiana. Taxpayer filed a GA-110L Request for Refund form seeking a refund of sales tax paid on exempt purchases of electricity. The Indiana Department of Revenue ("Department") denied the refund claim, stating "The explanation for the claim and the supporting documentation indicate a change of meter number during July 2017. Please submit an ST-200 application . . . for each new meter." Taxpayer subsequently filed the instant protest and included new ST-200 applications and documentation showing the change of meter numbers, as well as updated utility studies. These documents were not previously provided to the Department. Taxpayer waived its right to an administrative hearing and requested a final determination based upon the documents submitted with the protest. Further facts will be supplied as required.

I. Sales Tax—Utility Exemption.

DISCUSSION

Taxpayer protests the denial of a refund of sales tax paid on electricity during the period of August 2017 through December 2017. The Department based its denial on the lack of updated ST-200 forms for the new meter numbers. Taxpayer argues that the meters were one-for-one replacements for the meters previously granted exemptions from sales tax. One meter was granted a twenty-five percent exemption, and the other was granted a one hundred percent predominant use exemption.

Sales tax is imposed by IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

Next, IC § 6-2.5-1-27 provides:

"Tangible personal property" means personal property that:

- (1) can be seen, weighed, measured, felt, or touched; or
- (2) is in any other manner perceptible to the senses.

The term includes electricity, water, gas, steam, and prewritten computer software.

(Emphasis added).

Also, IC § 6-2.5-5-5.1 provides in relevant parts:

- (a) As used in this section, "tangible personal property" includes electrical energy, natural or artificial gas, water, steam, and steam heat.
- (b) Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for direct consumption as a material to be consumed in the direct production of other tangible personal property in the person's business of manufacturing, processing, refining, repairing, mining, agriculture, horticulture, floriculture, or arboriculture. This exemption includes transactions involving acquisitions of tangible personal property used in commercial printing.
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Therefore, electricity is generally subject to sales tax unless the consumer is eligible for an exemption. Taxpayer's business, as a restaurant, is engaged in processing by preparing and serving food. Taxpayer's prior exemptions were granted on this basis.

Next, IC § 6-2.5-8-8 provides:

- (a) A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and the manner prescribed by the department. A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.
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- (c) The department may also allow a person to issue a blanket exemption certificate to cover exempt purchases over a stated period of time. The department may impose conditions on the use of the blanket exemption certificate and restrictions on the kind or category of purchases that are exempt.
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- (f) A power subsidiary (as defined in [IC 6-2.5-4-5](#)) or a person selling the services or commodities listed in [IC 6-2.5-4-5\(b\)](#) who accepts an exemption certificate issued by the department to a person who is exempt from the state gross retail tax under [IC 6-2.5-4-5](#) is relieved from the duty to collect state gross retail or use tax on the sale of the services or commodities listed in [IC 6-2.5-4-5\(b\)](#) until notified by the department that the exemption certificate has expired or has been revoked. If the department notifies a power subsidiary or a person selling the services or commodities listed in [IC 6-2.5-4-5\(b\)](#) that a person's exemption certificate has expired or has been revoked, the power subsidiary or person selling the services or commodities listed in [IC 6-2.5-4-5\(b\)](#) shall begin collecting state gross retail tax on the sale of the services or commodities listed in [IC 6-2.5-4-5\(b\)](#) to the person whose exemption certificate has expired or been revoked not later than thirty (30) days after the date of the department's notice. *An exemption certificate issued by the department to a person who is exempt from the state gross retail tax under [IC 6-2.5-4-5](#) remains valid for that person regardless of any subsequent one (1) for one (1) meter number changes with respect to that person that are required, made, or initiated by a power subsidiary or a person selling the services or commodities listed in [IC 6-2.5-4-5\(b\)](#). Within thirty (30) days after the final day of each calendar year quarter, a power subsidiary or a person selling the services or commodities listed in [IC 6-2.5-4-5\(b\)](#) shall report to the department any meter number changes made during the immediately preceding calendar year quarter and distinguish between the one (1) for one (1) meter changes and the one (1) for multiple meter changes made during the calendar year quarter. Except for a person to whom a blanket utility exemption applies, any meter number changes not involving a one (1) to one (1) relationship will no longer be exempt and will require the person to submit a new utility exemption application for the new meters. Until an application for a new meter is approved, the new meter is subject to the state gross retail tax and the power subsidiary or the person selling the services or commodities listed in [IC 6-2.5-4-5\(b\)](#) is required to collect the state gross retail tax from the date of the meter change.* (Emphasis added).

Taxpayer has demonstrated that the restaurant had two one-for-one meter number changes, as addressed under IC § 6-2.5-8-8(f). As part of its protest, Taxpayer supplied the documentation described under and required by IC § 6-2.5-8-8(f) for the two meters that replaced those previously granted exemptions. The documentation shows that meter '703 was replaced by meter number '513, and meter number '245 was replaced by meter number '600. However, because these documents have not been previously reviewed by the Department, Taxpayer's protest shall be granted subject to supplemental review of the ST-200 forms and supporting documentation provided. The Department will verify the information provided in the updated utility studies and issue any resulting refunds accordingly.

FINDING

Taxpayer's protest is sustained subject to supplemental review. To the extent the Department grants a refund, Taxpayer's protest is sustained. Otherwise, Taxpayer's protest is denied.

March 28, 2019

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